

MEMORANDUM OF LAW

DATE: March 15, 1993

TO: Larry Grissom, Retirement Administrator

FROM: City Attorney

SUBJECT: Thirteenth Check - George Stepanof

In a memorandum dated March 3, 1993, you requested our evaluation of staff's decision not to distribute a thirteenth check to recent retiree George Stepanof.

BACKGROUND

When the Board approves a service retirement, the retirement is typically approved retroactively. By that, I mean the Board's agenda reflects and the Board's action contemplates that the effective date of the service retirement is a date prior in time to when the Board actually votes its approval of the retirement. In this regard, the Board acted in a typical fashion when they approved Mr. Stepanof's service retirement.

The Board approved Mr. Stepanof's retirement on November 20, 1992, and made the retirement retroactive to an effective date of October 26, 1992. In November, Mr. Stepanof received his first retirement check. The check included a pro-rated amount for the five (5) days he was in benefit status during the month of October.

ANALYSIS

As you point out in your memo, San Diego Municipal Code ("SDMC") section 24.0404(A)(2) states that to qualify for a thirteenth check, "the retiree must be on the retirement payroll for the month of October of any year in which benefits are to be paid" You further explain that because Mr. Stepanof did not receive his first retirement check until November of 1992, staff excluded him from the list of those retirees qualified to receive a thirteenth check.

Evidently, staff has interpreted the language "on the payroll," as used in SDMC section 24.0404(A)(2), to be synonymous with the Retirement System distributing a retirement check. Although staff's interpretation is logical and reasonable, it appears to be unduly restrictive. Webster's dictionary defines payroll as "a paymaster's or employer's list of those entitled to

pay and of the amounts due to each." Webster's New Collegiate Dictionary 865 (9th ed. 1987) (emphasis added). Moreover, a cardinal rule of interpretation in this area is that pension laws, being remedial in nature, should be liberally construed in favor of the persons intended to be benefitted thereby. *Grimm v. City of San Diego*, 94 Cal. App. 3d 33, 38 (1979).

CONCLUSION

In light of the foregoing analysis, it is our opinion that Mr. Stepanof was entitled to receive and should have been distributed a thirteenth check for 1992. Although he did not receive his first retirement check until November of 1992, there is no doubt that the Retirement System accrued a liability during the month of October to pay him a benefit to which he was entitled. Mr. Stepanof was therefore "on the payroll" for the five days during the month of October when he was in benefit status.

If you have any further questions, please give me a call.

JOHN W. WITT, City Attorney

By

Richard A. Duvernay

Deputy City Attorney

RAD:mrh:352(x043.2)

ML-93-32

TOP

TOP